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IN THE

Supreme Court of the United States

October Term, 1978
No. 78-225

BRUCE BABBITT, GOVERNOR OF THE STATE OF ARIZONA, *et al.*,

Defendants and Appellants,

and

ARIZONA FARM BUREAU FEDERATION, an ARIZONA CORPORATION, *et al.*,

Intervenor Appellants,

vs.

UNITED FARM WORKERS NATIONAL UNION on Behalf of Itself and Its Members, *et al.*,

Appellees.

On Appeal From the United States District Court for the District of Arizona.

Brief of Amici Curiae, Agricultural Producers Labor Committee and South Central Farmers Committee.

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This brief is filed with the written consent of all parties pursuant to Rule 42 of this Court.

Statement of Interest of Amici.

The Agricultural Producers Labor Committee (APLC) is a trade association representing farmers who grow ninety percent of California's citrus and avocado crop. The South Central Farmers Committee (SCFC) is composed of producers of table grapes in California's San Joaquin and Coachella Valleys.

Members of both organizations employ agricultural laborers to cultivate and harvest their crops, and are therefore subject to the California Agricultural Labor Relations Act (ALRA), California Labor Code §§ 1140, *et seq.** The United Farm Workers of America, AFL-CIO (UFW), an affiliate of appellee union, has been certified by the California Agricultural Labor Relations Board (ALRB) as the exclusive bargaining representative of the agricultural employees of many of the farmers who belong to APLC and SCFC. Some of these farmers have entered into collective bargaining agreements with the UFW. Others are involved in litigation before the ALRB and in the California courts over the interpretation and application of the ALRA. The UFW is a real party in interest to much of this litigation.

Both APLC and SCFC have taken an active interest in rulemaking by the ALRB and in legislation concerning agricultural labor matters.

Amici are substantially interested in this case because of its potential impact on the ALRA. While the California act is new and is not perfect, amici think that it should be given a chance to operate and develop free of the sort of unalterable constitutional standards suggested by the district court. The application, interpretation and, if necessary, modification of the ALRA should be left to the ALRB, the California courts and the California Legislature. Because affirmance of the decision below would cast serious doubt on the constitutionality of many of the ALRA's provisions and severely limit the choices available to the ALRB, courts and legislature, amici join appellants in requesting reversal.

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*The text of the ALRA is attached as an appendix.

ARGUMENT.

INTRODUCTION.

At the invitation of appellee union, the district court used the California act as a yardstick for measuring the counterpart Arizona statute. Jurisdictional Statement at A-17, A-19. It comes as no surprise that the union finds California's law preferable to Arizona's, *see* Motion to Affirm at 8, because the union has played a highly significant role in the formulation and administration of the California act. Yet it is very doubtful whether even the "model" ALRA could meet the standards laid down by the three-judge court for a constitutional farm labor law. Thus, while the district court's holding was evoked by a state law which it perceived as anti-union, affirmance of that holding could be expected directly to affect *all* agricultural labor statutes, present and future, state and federal. Amici submit that it is not the function of this Court to promulgate uniform national standards for farm labor legislation, a task Congress has thus far explicitly eschewed.

1. The California Act Precludes Voluntary Recognition of a Union.

According to the union, the feature of the Arizona law which triggers close scrutiny of its election procedures is its asserted prohibition on voluntary recognition of a union. Motion to Affirm at 11-12. The union seeks to distinguish the NLRA on the ground that it permits recognition based on authorization cards or other evidence of majority support. *Id.* at 15 n. 11.

Amici can find no provision in the Arizona act having the effect claimed by the union, nor anything in the district court's opinion embracing the union's theory.

Sections 23-1385(A)(5) and 23-1389(A) of the AERA merely establish that an employer can be *required* to bargain only with a union which has won an election. Neither section forbids voluntary recognition. Because the *opportunity* for recognition is all employees have in the absence of any regulatory statute, it is hard to see how Arizona's election procedures can possibly infringe any right of constitutional dimension.

Nevertheless, if the AERA is suspect because it precludes voluntary recognition, the California act wears the same Achilles' Heel. Section 1153(f) of the ALRA makes it an unfair labor practice to recognize or bargain with a union that has not been certified based on a secret ballot election. The California board has recognized that the ALRA differs from the NLRA in this respect. *See Eugene Acosta,* 1 A.L.R.B. No. 1 at 17-18 (1975). Thus, if searching scrutiny of the Arizona law's election procedures is due, rigorous review of the analogous provisions of the California law must equally be warranted.

2. The California Act Disenfranchises Substantial Numbers of Employees.

The district court found that because of the migratory and transitory nature of agricultural employment, the Arizona law's election procedures would disenfranchise a significant and substantial number of employees. Jurisdictional Statement at A-28. This perceived shortcoming was deemed offensive to the first and fourteenth amendments. *See* Motion to Affirm at 10-11. Amici believe there is substantial doubt whether the California statute's election procedures could pass the "no substantial disenfranchisement" test adopted by the three-judge panel. Most of the specific defects the court detected in the Arizona act also exist under the California law.

A. The California Act Permits Elections to Be Held After a Period of Peak Employment Has Ended and Most Employees Have Departed.

The district court held Arizona's election procedures unconstitutional because they fail to require in every case that both the filing of the election petition and the holding of the election itself take place during a period of peak employment. Jurisdictional Statement at A-16, A-25 to A-26. The court adopted the California statute's definition of a peak period as one in which fifty percent or more of the highest number of workers employed at any time during the year are present. *Compare id.* at A-15 *with* ALRA § 1156.4.

The California act differs from the Arizona law in providing that this peak employment condition must be met during the payroll period preceding the filing of an election petition. ALRA § 1156.3(a)(1). The ALRA also specifies that the workers employed in that payroll period are the eligible voters. ALRA § 1157. But, like the Arizona statute, the California law does not require that the election itself be held during a peak period. The only limitation imposed on the timing of the election is that it be held within seven days of the filing of the petition. ALRA § 1156.3(a).

As a result, if a layoff takes place within seven days of the filing of the petition, many of the eligible voters may have departed by election day. *See Lu-ette Farms,* 2 A.L.R.B. No. 49 at 5 (1976), election upheld although only 53 of 112 eligible voters employed on day of election). Indeed, a petition may be

filed although many of those who will be eligible to vote have already left. *Cf. id.* at 6 (election upheld although at least 40 of 112 eligible voters not employed on day petition was filed). Moreover, the group of employees theoretically eligible to vote may be only half the size of the work force employed at some time earlier in the year. ALRA § 1156.4.

Thus, if the Arizona law is infirm on the ground that it permits an election to be held after a period of peak employment has ended and a substantial number of employees may be absent and unable to vote, the California statute is similarly defective.

B. The California Act Disenfranchises Regular Employees Who Do Not Work Immediately Prior to the Filing of an Election Petition.

The district court also held Arizona's election procedures unconstitutional because, as it interpreted the AERA, a farmer's regular permanent and temporary employees (those who worked for him in prior years) cannot vote if they are not employed at the time of the election. Jurisdictional Statement at A-27 to A-28. The California law's election provisions are virtually identical. Only employees who were paid, entitled to be paid, on vacation or on sick leave during the payroll period immediately preceding the filing of an election petition are eligible to vote. Employees laid off prior to the eligibility period for lack of work cannot vote regardless of the duration of their employment in the year of the election or in prior years. ALRA § 1157; *Rod McClellan Co.*, 3 A.L.R.B. No. 6 at 3-4 (1977); *Yoder Bros.*, 3 A.L.R.B. No. 4 at 13 (1976).

C. The California Act Permits an Election Among One Group of Employees to Bar an Election Later in the Year Among Another Group of Employees.

The three-judge court further ruled that the Arizona law abridged associational rights because an election among one group of employees could bar another election for one year and thereby disenfranchise other groups of employees who were not present and eligible to vote in the initial election. Jurisdictional Statement at A-28 to A-29. This situation could arise where there are two separate harvest periods, as is true with lettuce, *id.* at A-15, or where the harvest is year-round but employee turnover is high, as is true with citrus, *id.* at A-16.

The same difficulty exists under the California act, which also contains a one year election bar, ALRA § 1156.5. In the multiple peak and high turnover cases, a substantial number of employees—perhaps a majority of the total number employed during the year—will be excluded from participation in the single election which the law allows, regardless of when it is held. The ALRB has expressly recognized this unavoidable dilemma. *Eugene Acosta*, 1 A.L.R.B. No. 1 at 19 n. 15 (1975). If the Arizona statute must fall because of its failure to solve this conundrum, so must the California law.

The Arizona and California acts share many weaknesses. In other respects, they diverge. The Arizona Legislature has chosen one approach, the California Legislature, another. But the differences between the two laws are not of constitutional dimension. There is no single constitutionally-mandated solution—nor, in some cases, any solution—to the vexing difficulties

posed by the seasonal and migratory nature of agricultural employment.

3. The California Act Does Not Provide for Bargaining Orders.

The district court held that a state labor relations statute must provide for the issuance of bargaining orders in cases of egregious pre-election employer misconduct, thereby elevating this Court's decision in *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), to constitutional status. Jurisdictional Statement at A-29 to A-30. In support of its holding, the lower court intimated that the ALRB has found bargaining orders necessary in California. *Id.* at A-19.

Although several cases are pending in which the UFW has requested bargaining orders, to the knowledge of counsel no decision of the ALRB or its administrative law officers has held that the California statute permits imposition of a bargaining obligation based on anything less than a union's victory in a secret ballot election. In our view, it is unlikely that any such ALRB decision will issue or be upheld by the California courts. Section 1153(f) of the ALRA expressly declares it unlawful for an employer to recognize or bargain with a union which has not won a valid election, and it is difficult to see how this provision allows for the imposition of *Gissel*-type bargaining orders.

Affirmance, however, would take the matter out of the hands of the ALRB and the state courts, and require that the California act be construed to permit bargaining orders as sought by the UFW or be declared unconstitutional. Amici submit that the California board, courts and legislature are fully capable of working

out their own solutions to the problem of pre-election employer misconduct. Indeed, experience under the California statute indicates that they have already done so. Notwithstanding the contrary implication in the district court's opinion, unions have been able successfully to organize farmworkers in California despite the absence of bargaining orders.

If, as we believe, the California law does rule out bargaining orders, surely this omission does not make a nullity of California's effort to guarantee farmworkers the right freely to express their choice concerning unionization through a secret ballot election.

4. The California Act Does Not Provide for Enforcement of First Amendment Access Rights.

Section 23-1385(C) of the Arizona act states that an employer shall not be required to make available "facilities" to a labor union. Assuming that "facilities" included real property, the district court held that this provision violated the first and fourteenth amendments as construed by the Court in *Marsh v. Alabama*, 326 U.S. 501 (1946). Jurisdictional Statement at A-36 to A-40. The lower court predicated its invocation of the first amendment on a finding that some employers operate labor housing which it analogized to the company town in *Marsh*.

Despite the district court's assertion that section 23-1385(c) provides a "positive tool" to keep out union organizers, the manifest purpose of the invalidated provision is simply to foreclose the Arizona board from holding a denial of facilities to be an unfair labor practice under AERA §§ 21-1383(A) and 23-1385 (A)(1). It does not close the doors of the Arizona

courts to actions for declaratory or injunctive relief, nor does it forbid the assertion of a first amendment defense to an action for trespass. Thus, the only explanation for the lower court's holding is that Arizona is constitutionally *required* to provide for enforcement of first amendment access rights through its state labor board, notwithstanding this Court's ruling in *Hudgens v. NLRB*, 424 U.S. 507 (1976), that the NLRB must *not* apply constitutional criteria in considering access questions.

Like the NLRB, the California board is not authorized to consider first amendment principles in construing and applying the ALRA. Instead, the ALRB enforces a purely statutory right of access to farmers' fields. 8 Cal. Admin. Code § 20900; *see ALRB v. Superior Court of Tulare County*, 16 Cal.3d 392, 546 P.2d 687, 128 Cal.Rptr. 183, *appeal dismissed*, 429 U.S. 802 (1976). In so doing, the California board has attempted to balance employees' statutory organizational rights against employers' constitutional property rights and accordingly limit unions' access to the fields, as required by the Court's decision in *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105 (1956). While the ALRB nonetheless purports to ban *all* restrictions on admittance to private farm labor housing, the California courts may yet strike a different balance and deny or limit such access in accordance with the *Babcock & Wilcox* standard.

Affirmance of the lower court's holding that a state labor board must enforce first amendment rights, together with its finding that the company town model is germane to agriculture, would mandate an entirely different approach to access issues in California. Under *Marsh v. Alabama*, a finding that private property

is like a company town — that it is the functional equivalent of public property — dictates that it be treated exactly like public property for purposes of applying the first amendment. The adequacy of alternatives for reaching those who work or reside on the property is thereafter irrelevant. Accordingly, affirmance would compel California to authorize ALRB enforcement of a completely unrestricted right of access to agricultural property, without regard to the views of California's courts or legislature.

Conclusion.

The Court does not need to be reminded that the effects of affirmance would extend throughout the country. What amici have sought to do is demonstrate that those effects would be intensely felt even in California, a state in the forefront of ongoing experimentation with agricultural labor relations legislation. Affirmance would dampen or destroy California's experiment in creative federalism, and discourage other states from seeking to discover more perfect solutions to the difficulties which the Arizona and California legislatures have addressed.

Accordingly, amici join in appellants' request that the judgment of the district court be reversed.

Respectfully submitted,

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November 24, 1978

APPENDIX A.

CALIFORNIA LEGISLATURE—1975-76 THIRD EXTRAORDINARY SESSION

SENATE BILL No. 1

Introduced by Senator Dunlap
(Coauthor: Assemblyman Berman)

May 20, 1975

REFERRED TO COMMITTEE ON INDUSTRIAL RELATIONS

An act to add Part 3.5 (commencing with Section 1140) to Division 2 of the Labor Code, relating to agricultural labor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1, as introduced, Dunlap (I.R.). Labor: agricultural labor relations.

Existing state law does not contain any provisions specifically relating to agricultural labor relations. However, existing law does provide that individual workers in the state shall have full freedom of association, self-organization, and designation of representatives of their own choosing to negotiate the terms and conditions of their employment, and shall be free from interference, restraint, or coercion of employers in the designation of representatives, in self-organization, and other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

This bill would enact the Agricultural Labor Relations Act of 1975 to set forth the policy of this state with regard to agricultural products and pursuits, and to define the rights, powers, and duties of agricultural employers and their employees, and of labor organizations representing, or desiring to represent, such employees.

This bill would define certain conduct as unfair labor practices of employers and labor organizations.

This bill would provide for the holding of a secret ballot election in a bargaining unit composed of agricultural employees of an employer for the selection of a labor organization as their exclusive bargaining representative, and would provide the procedure for petitions for, the conduct of, and the eligibility of agricultural workers to vote in, such elections.

This bill would make provision for the institution of suits against labor organizations, and would make it unlawful for agricultural employers, associations thereof, and other specified persons to make specified payments, loans, or deliveries, or agree to do such, to labor organizations, representatives of agricultural employees, and other designated persons. It would also make it unlawful for agricultural employee representatives, labor organizations and others to receive such payments, loans, or deliveries. It would also specify certain exemptions from and exceptions to such prohibitions.

This bill would also create an Agricultural Labor Relations Board in state government, and specify its membership, powers, and duties under the bill.

This bill would specify the extent of judicial review of actions brought before the board pursuant to the bill, and would provide a penalty for violation of the bill's provisions or interference with proper actions of the board.

Finally, the bill would provide that neither appropriation is made nor obligation created for the reimbursement of any local agency for any costs incurred by it pursuant to the bill.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no state funding.

The people of the State of California do enact as follows:

SECTION 1. In enacting this legislation the people of the State of California seek to ensure peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations.

This enactment is intended to bring certainty and a sense of fair play to a presently unstable and potentially volatile condition in the state. The Legislature recognizes that no law in itself resolves social injustice and economic

dislocations.

However, in the belief the people affected desire a resolution to this dispute and will make a sincere effort to work through the procedures established in this legislation, it is the hope of the Legislature that farm laborers, farmers, and all the people of California will be served by the provisions of this act.

SEC. 1.5. It is the intent of the Legislature that collective-bargaining agreements between agricultural employers and labor organizations representing the employees of such employers entered into prior to the effective date of this legislation and continuing beyond such date are not to be automatically canceled, terminated or voided on that effective date; rather, such a collective-bargaining agreement otherwise lawfully entered into and enforceable under the laws of this state shall be void upon the Agricultural Labor Relations Board certification of that election after the filing of an election petition by such employees pursuant to Section 1156.3 of the Labor Code.

SEC. 2. Part 3.5 (commencing with Section 1140) is added to Division 2 of the Labor Code, to read:

PART 3.5. AGRICULTURAL LABOR RELATIONS

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

1140. This part shall be known and may be referred to as the Agricultural Labor Relations Act of 1975.

1140.2. It is hereby stated to be the policy of the State of California to encourage and protect the right of agricultural employees to full freedom of association, self-organization, and designation of representatives of their own choosing, to negotiate the terms and conditions of their employment, and to be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. For this purpose this part is adopted to

provide for collective-bargaining rights for agricultural employees.

1140.4. As used in this part:

(a) The term "agriculture" includes farming in all its branches, and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 1141j(g) of Title 12 of the United States Code), the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market.

(b) The term "agricultural employee" or "employee" shall mean one engaged in agriculture, as such term is defined in subdivision (a). However, nothing in this subdivision shall be construed to include any person other than those employees excluded from the coverage of the National Labor Relations Act, as amended, as agricultural employees, pursuant to Section 2(3) of the Labor Management Relations Act (Section 152(3), Title 29, United States Code), and Section 3(f) of the Fair Labor Standards Act (Section 203(f), Title 29, United States Code).

Further, nothing in this part shall apply, or be construed to apply, to any employee who performs work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work (as these terms have been construed under Section 8(e) of the Labor Management Relations Act, 29 USC Section 158(e)) or logging or timber-clearing operations in initial preparation of land for farming, or who does land leveling or only land surveying for any of the above.

As used in this subdivision, "land leveling" shall include only major land moving operations changing the contour of the land, but shall not include annual or seasonal tillage

or preparation of land for cultivation.

(c) The term "agricultural employer" shall be liberally construed to include any person acting directly or indirectly in the interest of an employer in relation to an agricultural employee, any individual grower, corporate grower, cooperative grower, harvesting association, hiring association, land management group, any association of persons or cooperatives engaged in agriculture, and shall include any person who owns or leases or manages land used for agricultural purposes, but shall exclude any person supplying agricultural workers to an employer, any farm labor contractor as defined by Section 1682, and any person functioning in the capacity of a labor contractor. The employer engaging such labor contractor or person shall be deemed the employer for all purposes under this part.

(d) The term "person" shall mean one or more individuals, corporations, partnerships, associations, legal representatives, trustees in bankruptcy, receivers, or any other legal entity, employer, or labor organization having an interest in the outcome of a proceeding under this part.

(e) The term "representatives" includes any individual or labor organization.

(f) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists, in whole or in part, for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work for agricultural employees.

(g) The term "unfair labor practice" means any unfair labor practice specified in Chapter 4 (commencing with Section 1153) of this part.

(h) The term "labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or

conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(i) The term "board" means Agricultural Labor Relations Board.

(j) The term "supervisor" means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

CHAPTER 2. AGRICULTURAL LABOR RELATIONS BOARD

Article 1. Agricultural Labor Relations Board: Organization

1141. (a) There is hereby created in state government the Agricultural Labor Relations Board, which shall consist of five members.

(b) The members of the board shall be appointed by the Governor with the advice and consent of the Senate. The term of office of the members shall be five years, and the terms shall be staggered at one-year intervals. Upon the initial appointment, one member shall be appointed for a term ending January 1, 1977, one member shall be appointed for a term ending January 1, 1978, one member shall be appointed for a term ending January 1, 1979, one member shall be appointed for a term ending January 1, 1980, and one member shall be appointed for a term ending January 1, 1981. Any individual appointed to fill a vacancy of any member shall be appointed only for the unexpired term of the member to whose term he is succeeding. The Governor shall designate one member to serve as chairperson of the board. Any member of the board may be removed by the Governor, upon notice and

hearing, for neglect of duty or malfeasance in office, but for no other cause.

1142. (a) The principal office of the board shall be in Sacramento, but it may meet and exercise any or all of its power at any other place in California.

(b) Besides the principal office in Sacramento, as provided in subdivision (a), the board may establish offices in such other cities as it shall deem necessary. The board may delegate to the personnel of these offices such powers as it deems appropriate to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, to determine whether a question of representation exists, to direct an election by a secret ballot pursuant to the provisions of Chapter 5 (commencing with Section 1156), and to certify the results of such election, and to investigate, conduct hearings and make determinations relating to unfair labor practices. The board may review any action taken pursuant to the authority delegated under this section upon a request for a review of such action filed with the board by an interested party. Any such review made by the board shall not, unless specifically ordered by the board, operate as a stay of any action taken. The entire record considered by the board in considering or acting upon any such request or review shall be made available to all parties prior to such consideration or action, and the board's findings and action thereon shall be published as a decision of the board.

1143. The board shall, at the close of each fiscal year, make a report in writing to the Legislature and to the Governor stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the board, and an account of all moneys it has disbursed.

1144. The board may from time to time make, amend, and rescind, in the manner prescribed in Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code, such rules and regulations as may be necessary to carry out the

provisions of this part.

1145. The board may appoint an executive secretary and such attorneys, hearing officers, administrative law judges, and other employees as it may from time to time find necessary for the proper performance of its duties. Attorneys appointed pursuant to this section may, at the discretion of the board, appear for and represent the board in any case in court.

1146. The board is authorized to delegate to any group of three or more board members any or all the powers which it may itself exercise. A vacancy in the board shall not impair the right of the remaining members to exercise all the powers of the board, and three members shall at all times constitute a quorum. A vacancy shall be filled in the same manner as an original appointment.

1147. The salary of a member of the board shall be the same as that of a judge of the superior court.

1148. The board shall follow applicable precedents of the National Labor Relations Act, as amended.

1149. There shall be a general counsel of the board who shall be appointed by the Governor, subject to confirmation by a majority of the Senate, for a term of four years. The general counsel shall have the power to appoint such attorneys, administrative assistants, and other employees as necessary for the proper exercise of his duties. The general counsel of the board shall exercise general supervision over all attorneys employed by the board (other than administrative law judges and legal assistants to board members), and over the officers and employees in the regional offices. He shall have final authority, on behalf of the board, with respect to the investigation of charges and issuance of complaints under Chapter 6 (commencing with Section 1160) of this part, and with respect to the prosecution of such complaints before the board. He shall have such other duties as the board may prescribe or as may be provided by law. In case of a vacancy in the office of the general counsel, the Governor is authorized to designate the officer or employee who shall act as general counsel during such

vacancy, but no person or persons so designated shall so act either (1) for more than 40 days when the Legislature is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted.

1150. Each member of the board and the general counsel of the board shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment.

Article 2. Investigatory Powers

1151. For the purpose of all hearings and investigations, which, in the opinion of the board, are necessary and proper for the exercise of the powers vested in it by Chapters 5 (commencing with Section 1156) and 6 (commencing with Section 1160) of this part:

(a) The board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose or examination, and the right to copy, any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The members of the board or their designees or their duly authorized agents shall have the right of free access to all places of labor. The board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application. Within five days after the service of a subpoena on any person requiring the production of any evidence in his possession or under his control, such person may petition the board to revoke, and the board shall revoke, such subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose

production is required. Any member of the board, or any agent or agency designated by the board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the state at any designated place of hearing.

(b) In case of contumacy or refusal to obey a subpoena issued to any person, any superior court in any county within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which such person allegedly guilty of contumacy or refusal to obey is found or resides or transacts business, shall, upon application by the board, have jurisdiction to issue to such person an order requiring such person to appear before the board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

1151.2. No person shall be excused from attending and testifying, or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. However, no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

1151.3. Any party shall have the right to appear at any hearing in person, by counsel, or by other representative.

1151.4. (a) Complaints, orders, and other process and papers of the board, its members, agents, or agency, may be served either personally or by registered mail or by telegraph, or by leaving a copy thereof at the principal

office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as provided in this subdivision shall be proof of service of the same. Witnesses summoned before the board, its members, agents, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the state, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the state.

(b) All process of any court to which application may be made under this part may be served in the county where the defendant or other person required to be served resides or may be found.

1151.5. The several departments and agencies of the state upon request by the board, shall furnish the board all records, papers, and information in their possession, not otherwise privileged, relating to any matter before the board.

1151.6. Any person who shall willfully resist, prevent, impede, or interfere with any member of the board or any of its agents or agencies in the performance of duties pursuant to this part shall be guilty of a misdemeanor, and shall be punished by a fine of not more than five thousand ($5,000) dollars.

CHAPTER 3. RIGHTS OF AGRICULTURAL EMPLOYEES

1152. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a

labor organization as a condition of continued employment as authorized in subdivision (c) of Section 1153.

CHAPTER 4. UNFAIR LABOR PRACTICES AND REGULATION OF SECONDARY BOYCOTTS

1153. It shall be an unfair labor practice for an agricultural employer to do any of the following:

(a) To interfere with, restrain, or coerce agricultural employees in the exercise of the rights guaranteed in Section 1152.

(b) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. However, subject to such rules and regulations as may be made and published by the board pursuant to Section 1144, an agricultural employer shall not be prohibited from permitting agricultural employees to confer with him during working hours without loss of time or pay.

(c) By discrimination in regard to the hiring or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization.

Nothing in this part, or in any other statute of this state, shall preclude an agricultural employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this section as an unfair labor practice) to require as a condition of employment, membership therein on or after the fifth day following the beginning of such employment, or the effective date of such agreement, whichever is later, if such labor organization is the representative of the agricultural employees as provided in Section 1156 in the appropriate collective-bargaining unit covered by such agreement. No employee who has been required to pay dues to a labor organization by virtue of his employment as an agricultural worker during any calendar month, shall be required to pay dues to another labor organization by virtue of similar

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employment during such month. For purposes of this chapter, membership shall mean the satisfaction of all reasonable terms and conditions uniformly applicable to other members in good standing; provided, that such membership shall not be denied or terminated except in compliance with a constitution or bylaws which afford full and fair rights to speech, assembly, and equal voting and membership privileges for all members, and which contain adequate procedures to assure due process to members and applicants for membership.

(d) To discharge or otherwise discriminate against an agricultural employee because he has filed charges or given testimony under this part.

(e) To refuse to bargain collectively in good faith with labor organizations certified pursuant to the provisions of Chapter 5 (commencing with Section 1156) of this part.

(f) To recognize, bargain with, or sign a collective-bargaining agreement with any labor organization not certified pursuant to the provisions of this part.

1154. It shall be an unfair labor practice for a labor organization or its agents to do any of the following:

(a) To restrain or coerce:

(1) Agricultural employees in the exercise of the rights guaranteed in Section 1152. This paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.

(2) An agricultural employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances.

(b) To cause or attempt to cause an agricultural employer to discriminate against an employee in violation of subdivision (c) of Section 1153, or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated for reasons other than failure to satisfy the membership requirements specified in subdivision (c) of Section 1153.

(c) To refuse to bargain collectively in good faith with

an agricultural employer, provided it is the representative of his employees subject to the provisions of Chapter 5 (commencing with Section 1156) of this part.

(d) To do either of the following: (i) To engage in, or to induce or encourage any individual employed by any person to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services; or (ii) to threaten, coerce, or restrain any person; where in either case (i) or (ii) an object thereof is any of the following:

(1) Forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by Section 1154.5.

(2) Forcing or requiring any person to cease using, selling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees. Nothing contained in this paragraph shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing.

(3) Forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his agricultural employees if another labor organization has been certified as the representative of such employees under the provisions of Chapter 5 (commencing with Section 1156) of this part.

(4) Forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class, unless such employer is failing to conform to an order or certification of the board determining the bargaining representative for employees performing such work.

Nothing contained in this subdivision (d) shall be construed to prohibit publicity, including picketing for the purpose of truthfully advising the public, including consumers, that a product or products or ingredients thereof are produced by an agricultural employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services at the establishment of the employer engaged in such distribution, and as along as such publicity does not have the effect of requesting the public to cease patronizing such other employer.

However, publicity which includes picketing and has the effect of requesting the public to cease patronizing such other employer, shall be permitted only if the labor organization is currently certified as the representative of the primary employer's employees.

Further, publicity other than picketing, but including peaceful distribution of literature which has the effect of requesting the public to cease patronizing such other employer, shall be permitted only if the labor organization has not lost an election for the primary employer's employees within the preceding 12-month period, and no other labor organization is currently certified as the representative of the primary employer's employees.

Nothing contained in this subdivision (d) shall be construed to prohibit publicity, including picketing, which may not be prohibited under the United States Constitution or the California Constitution.

Nor shall anything in this subdivision (d) be construed to apply or be applicable to any labor organization in its representation of workers who are not agricultural employees. Any such labor organization shall continue to be governed in its intrastate activities for nonagricultural workers by Section 923 and applicable judicial precedents.

(e) To require of employees covered by an agreement authorized under subdivision (c) of Section 1153 the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the board finds excessive or discriminatory under all circumstances. In making such a finding, the board shall consider, among other relevant factors, the practices and customs of labor organizations in the agriculture industry and the wages currently paid to the employees affected.

(f) To cause or attempt to cause an agricultural employer to pay or deliver, or agree to pay or deliver, any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.

(g) To picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is either forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective-bargaining representative, unless such labor organization is currently certified as the representative of such employees, in any of the following cases:

(1) Where the employer has lawfully recognized in accordance with this part any other labor organization and a question concerning representation may not appropriately be raised under Section 1156.3.

(2) Where within the preceding 12 months a valid election under Chapter 5 (commencing with Section 1156) of this part has been conducted.

Nothing in this subdivision shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver, or transport any goods or not to perform

any services.

Nothing in this subdivision (g) shall be construed to permit any act which would otherwise be an unfair labor practice under this section.

(h) To picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is either forcing or requiring an employer to recognize or bargain with the labor organization as a representative of his employees unless such labor organization is currently certified as the collective-bargaining representative of such employees.

(i) Nothing contained in this section shall be construed to make unlawful a refusal by any person to enter upon the premises of any agricultural employer, other than his own employer, if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this part.

1154.5. It shall be an unfair labor practice for any labor organization which represents the employees of the employer and such employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains, or agrees to cease or refrain, from handling, using, selling, transporting, or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be, to such extent, unenforceable and void. Nothing in this section shall apply to an agreement between a labor organization and an employer relating to a supplier of an ingredient or ingredients which are integrated into a product produced or distributed by such employer where the labor organization is certified as the representative of the employees of such supplier, but no collective-bargaining agreement between such supplier and such labor organization is in effect. Further, nothing in this section shall apply to an agreement between a labor organization and an agricultural employer relating to the contracting or subcontracting of work to be done at the site of the

farm and related operations. Nothing in this part shall prohibit the enforcement of any agreement which is within the foregoing exceptions.

Nor shall anything in this section be construed to apply or be applicable to any labor organization in its representation of workers who are not agricultural employees. Any such labor organization shall continue to be governed in its intrastate activities for nonagricultural workers by Section 923 and applicable judicial precedents.

1154.6. It shall be an unfair labor practice for an employer or labor organization, or their agents, willfully to arrange for persons to become employees for the primary purpose of voting in elections.

1155. The expressing of any views, arguments, or opinions, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute evidence of an unfair labor practice under the provisions of this part, if such expression contains no threat of reprisal or force, or promise of benefit.

1155.2. (a) For purposes of this part, to bargain collectively in good faith is the performance of the mutual obligation of the agricultural employer and the representative of the agricultural employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any questions arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

(b) Upon the filing by any person of a petition not earlier than the 90th day nor later than the 60th day preceding the expiration of the 12-month period following initial certification, the board shall determine whether an employer has bargained in good faith with the currently certified labor organization. If the board finds that the employer has not bargained in good faith, it may extend the certification for up to one additional

year, effective immediately upon the expiration of the previous 12-month period following initial certification.

1155.3. (a) Where there is in effect a collective-bargaining contract covering agricultural employees, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification does all of the following:

(1) Serves a written notice upon the other party to the contract of the proposed termination or modification not less than 60 days prior to the expiration date thereof, or, in the event such contract contains no expiration date, 60 days prior to the time it is proposed to make such termination or modification.

(2) Offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications.

(3) Notifies the Conciliation Service of the State of California within 30 days after such notice of the existence of a dispute, provided no agreement has been reached by that time.

(4) Continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract, for a period of 60 days after such notice is given, or until the expiration date of such contract, whichever occurs later.

(b) The duties imposed upon agricultural employers and labor organizations by paragraphs (2), (3), and (4) of subdivision (a) shall become inapplicable upon an intervening certification of the board that the labor organization or individual which is a party to the contract has been superseded as, or has ceased to be the representative of the employees, subject to the provisions of Chapter 5 (commencing with Section 1156) of this part, and the duties so imposed shall not be construed to require either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any

agricultural employee who engages in a strike within the 60-day period specified in this section shall lose his status as an agricultural employee of the agricultural employer engaged in the particular labor dispute, for the purposes of Section 1153 to 1154 inclusive, and Chapters 5 (commencing with Section 1156) and 6 (commencing with Section 1160) of this part, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

1155.4. It shall be unlawful for any agricultural employer or association of agricultural employers, or any person who acts as a labor relations expert, adviser, or consultant to an agricultural employer, or who acts in the interest of an agricultural employer, to pay, lend, or deliver, any money or other thing of value to any of the following:

(a) Any representative of any of his agricultural employees.

(b) Any agricultural labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the agricultural employees of such employer.

(c) Any employee or group or committee of employees of such employer in excess of their normal compensation for the purpose of causing such employee or group or committee directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing.

(d) Any officer or employee of an agricultural labor organization with intent to influence him in respect to any of his actions, decisions, or duties as a representative of agricultural employees or as such officer or employee of such labor organization.

1155.5. It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other thing of value prohibited by Section 1155.4.

1155.6. Nothing in Section 1155.4 or 1155.5 shall apply to any matter set forth in subsection (c) of Section 186 of

Title 29 of the United States Code.

1155.7. Nothing in this chapter shall be construed to apply or be applicable to any labor organization in its representation of workers who are not agricultural employees. Any such labor organization shall continue to be governed in its intrastate activities for nonagricultural workers by Section 923 and applicable judicial precedents

CHAPTER 5. LABOR REPRESENTATIVES AND ELECTIONS

1156. Representatives designated or selected by a secret ballot for the purposes of collective bargaining by the majority of the agricultural employees in the bargaining unit shall be the exclusive representatives of all the agricultural employees in such unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment. Any individual agricultural employee or a group of agricultural employees shall have the right at any time to present grievances to their agricultural employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect, if the bargaining representative has been given opportunity to be present at such adjustment.

1156.2. The bargaining unit shall be all the agricultural employees of an employer. If the agricultural employees of the employer are employed in two or more noncontiguous geographical areas, the board shall determine the appropriate unit or units of agricultural employees in which a secret ballot election shall be conducted.

1156.3. (a) A petition which is either signed by, or accompanied by authorization cards signed by, a majority of the currently employed employees in the bargaining unit may be filed in accordance with such rules and regulations as may be prescribed by the board, by an agricultural employee or group of agricultural

employees, or any individual or labor organization acting in their behalf alleging all the following:

(1) That the number of agricultural employees currently employed by the employer named in the petition, as determined from his payroll immediately preceding the filing of the petition, is not less than 50 percent of his peak agricultural employment for the current calendar year.

(2) That no valid election pursuant to this section has been conducted among the agricultural employees of the employer named in the petition within the 12 months immediately preceding the filing thereof.

(3) That no labor organization is currently certified as the exclusive collective-bargaining representative of the agricultural employees of the employer named in the petition.

(4) That the petition is not barred by an existing collective-bargaining agreement.

Upon receipt of such a signed petition, the board shall immediately investigate such petition, and, if it has reasonable cause to believe that a bona fide question of representation exists, it shall direct a representation election by secret ballot to be held, upon due notice to all interested parties and within a maximum of seven days of the filing of the petition. If at the time the election petition is filed a majority of the employees in a bargaining unit are engaged in a strike, the board shall, with all due diligence, attempt to hold a secret ballot election within 48 hours of the filing of such petition. The holding of elections under strike circumstances shall take precedence over the holding of other secret ballot elections.

The board shall make available at any election under this chapter ballots printed in English and Spanish. The board may also make available at such election ballots printed in any other language as may be requested by an agricultural labor organization, or agricultural employee eligible to vote under this part. Every election ballot, except ballots in runoff elections where the choice is between labor organizations, shall provide the employee

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with the opportunity to vote against representation by a labor organization by providing an appropriate space designated "No Labor Organizations".

(b) Any other labor organization shall be qualified to appear on the ballot if it presents authorization cards signed by at least 20 percent of the employees in the bargaining unit at least 24 hours prior to the election.

(c) Within five days after an election, any person may file with the board a signed petition asserting that allegations made in the petition filed pursuant to subdivision (a) were incorrect, that the board improperly determined the geographical scope of the bargaining unit, or objecting to the conduct of the election or conduct affecting the results of the election.

Upon receipt of a petition under this subdivision, the board, upon due notice, shall conduct a hearing to determine whether the election shall be certified. Such hearing may be conducted by an officer or employee of a regional office of the board. He shall make no recommendations with respect thereto. If the board finds, on the record of such hearing, that any of the assertions made in the petition filed pursuant to this subdivision are correct, or that the election was not conducted properly, or misconduct affecting the results of the election occurred, the board may refuse to certify the election. Unless the board determines that there are sufficient grounds to refuse to do so, it shall certify the election.

(d) If no petition is filed pursuant to subdivision (c) within five days of the election the board shall certify the election.

(e) The board shall decertify a labor organization if the U.S. Equal Opportunity Commission has found, pursuant to Section 2000(e)-(5) of Title 29 of the United States Code, that the labor organization engaged in discrimination on the basis of race, color, national origin, religion, sex or any other arbitrary or invidious classification in violation of Subchapter VI of Chapter 21 of Title 42 of the United States Code during the period of such labor organization's present certification.

1156.4. Recognizing that agriculture is a seasonal occupation for a majority of agricultural employees, and wishing to provide the fullest scope for employees' enjoyment of the rights included in this part, the board shall not consider a representation petition or a petition to decertify as timely filed unless the employer's payroll reflects 50 percent of the peak agricultural employment for such employer for the current calendar year for the payroll period immediately preceding the filing of the petition.

In this connection, the peak agricultural employment for the prior season shall alone not be a basis for such determination, but rather the board shall estimate peak employment on the basis of acreage and crop statistics which shall be applied uniformly throughout the State of California and upon all other relevant data.

1156.5. The board shall not direct an election in any bargaining unit where a valid election has been held in the immediately preceding 12-month period.

1156.6. The board shall not direct an election in any bargaining unit which is represented by a labor organization that has been certified within the immediately preceding 12-month period or whose certification has been extended pursuant to subdivision (b) of Section 1155.2.

1156.7. (a) No collective-bargaining agreement executed prior to the effective date of this chapter shall bar a petition for an election.

(b) A collective-bargaining agreement executed by an employer and a labor organization certified as the exclusive bargaining representative of his employees pursuant to this chapter shall be a bar to a petition for an election among such employees for the term of the agreement, but in any event such bar shall not exceed three years, provided that both the following conditions are met:

(1) The agreement is in writing and executed by all parties thereto.

(2) It incorporates the substantive terms and conditions of employment of such employees.

(c) Upon the filing with the board by an employee or group of employees of a petition signed by 30 percent or more of the the agricultural employees in a bargaining unit represented by a certified labor organization which is a party to a valid collective-bargaining agreement, requesting that such labor organization be decertified, the board shall conduct an election by secret ballot pursuant to the applicable provisions of this chapter, and shall certify the results to such labor organization and employer.

However, such a petition shall not be deemed timely unless it is filed during the year preceding the expiration of a collective-bargaining agreement which would otherwise bar the holding of an election, and when the number of agricultural employees is not less than 50 percent of the employer's peak agricultural employment for the current calendar year.

(d) Upon the filing with the board of a signed petition by an agricultural employee or group of agricultural employees, or any individual or labor organization acting in their behalf, accompanied by authorization cards signed by a majority of the employees in an appropriate bargaining unit, and alleging all the conditions of paragraphs (1), (2), and (3), the board shall immediately investigate such petition and, if it has reasonable cause to believe that a bona fide question of representation exists, it shall direct an election by secret ballot pursuant to the applicable provisions of this chapter:

(1) That the number of agricultural employees currently employed by the employer named in the petition, as determined from his payroll immediately preceding the filing of the petition, is not less than 50 percent of his peak agricultural employment for the current calendar year.

(2) That no valid election pursuant to this section has been conducted among the agricultural employees of the employer named in the petition within the 12 months immediately preceding the filing thereof.

(3) That a labor organization, certified for an appropriate unit, has a collective-bargaining agreement

with the employer which would otherwise bar the holding of an election and that this agreement will expire within the next 12 months.

1157. All agricultural employees of the employer whose names appear on the payroll applicable to the payroll period immediately preceding the filing of the petition of such an election shall be eligible to vote. An economic striker shall be eligible to vote under such regulations as the board shall find are consistent with the purposes and provisions of this part in any election, provided that the striker who has been permanently replaced shall not be eligible to vote in any election conducted more than 12 months after the commencement of the strike.

In the case of elections conducted within 18 months of the effective date of this part which involve labor disputes which commenced prior to such effective date, the board shall have the jurisdiction to adopt fair, equitable, and appropriate eligibility rules, which shall effectuate the policies of this part, with respect to the eligibility of economic strikers who were paid for work performed or for paid vacation during the payroll period immediately preceding the expiration of a collective-bargaining agreement or the commencement of a strike; provided, however, that in no event shall the board afford eligibility to any such striker who has not performed any services for the employer during the 36-month period immediately preceding the effective date of this part.

1157.2. In any election where none of the choices on the ballot receives a majority, a runoff shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

1157.3. Employers shall maintain accurate and current payroll lists containing the names and addresses of all their employees, and shall make such lists available to the board upon request.

1158. Whenever an order of the board made pursuant to Section 1160.3 is based in whole or in part upon the

facts certified following an investigation pursuant to Sections 1156.3 to 1157.2 inclusive, and there is a petition for review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under Section 1160.8 and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

1159. In order to assure the full freedom of association, self-organization, and designation of representatives of the employees own choosing, only labor organizations certified pursuant to this part shall be parties to a legally valid collective-bargaining agreement.

CHAPTER 6. PREVENTION OF UNFAIR LABOR PRACTICES AND JUDICIAL REVIEW AND ENFORCEMENT

1160. The board is empowered, as provided in this chapter, to prevent any person from engaging in any unfair labor practice, as set forth in Chapter 4 (commencing with Section 1153) of this part.

1160.2. Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the board, or any agent or agency designated by the board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the board or a member thereof, or before a designated agency or agencies, at a place therein fixed, not less than five days after the serving of such complaint. No complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such

complaint may be amended by the member, agent, or agency conducting the hearing, or the board in its discretion, at any time prior to the issuance of an order based thereon. The person so complained against shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the board, any other person may be allowed to intervene in the proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the Evidence Code. All proceedings shall be appropriately reported.

1160.3. The testimony taken by such member, agent, or agency, or the board in such hearing shall be reduced to writing and filed with the board. Thereafter, in its discretion, the board, upon notice, may take further testimony or hear argument. If, upon the preponderance of the testimony taken, the board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, the board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, to take affirmative action, including reinstatement of employees with or without backpay, and making employees whole, when the board deems such relief appropriate, for the loss of pay resulting from the employer's refusal to bargain, and to provide such other relief as will effectuate the policies of this part. Where an order directs reinstatement of an employee, backpay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If, upon the preponderance of the testimony taken, the board shall be of the opinion that the person named in the complaint has not engaged in or is not engaging in any unfair labor practice, the board

shall state its findings of fact and shall issue an order dismissing the complaint. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any backpay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the board, or before an administrative law judge thereof, such member, or such administrative law judge, as the case may be, shall issue and cause to be served on the parties to the proceedings a proposed report, together with a recommended order, which shall be filed with the board, and, if no exceptions are filed within 20 days after service thereof upon such parties, or within such further period as the board may authorize, such recommended order shall become the order of the board and become effective as therein prescribed.

Until the record in a case shall have been filed in a court, as provided in this chapter, the board may, at any time upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

1160.4. The board shall have power, upon issuance of a complaint as provided in Section 1160.2 charging that any person has engaged in or is engaging in an unfair labor practice, to petition the superior court in any county wherein the unfair labor practice in question is alleged to have occurred, or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the board such temporary relief or restraining order as the court deems just and proper.

1160.5. Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) of subdivision (d) of Section 1154, the board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless within 10 days after notice that such

charge has been filed, the parties to such dispute submit to the board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of the dispute. Upon compliance by the parties to the dispute with the decision of the board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

1160.6. Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (1), (2), or (3) of subdivision (d), or of subdivision (g), of Section 1154, or of Section 1155, the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the board, petition the superior court in the county in which the unfair labor practice in question has occurred, is alleged to have occurred, or where the person alleged to have committed the unfair labor practice resides or transacts business, for appropriate injunctive relief pending the final adjudication of the board with respect to the matter. The officer or regional attorney shall make all reasonable efforts to advise the party against whom the restraining order is sought of his intention to seek such order at least 24 hours prior to doing so. In the event the officer or regional attorney has been unable to advise such party of his intent at least 24 hours in advance, he shall submit a declaration to the court under penalty of perjury setting forth in detail the efforts he has made. Upon the filing of any such petition, the superior court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper. Upon the filing of any such petition, the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony. For the purposes of this

section, the superior court shall be deemed to have jurisdiction of a labor organization either in the county in which such organization maintains its principal office, or in any county in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate, the procedure specified herein shall apply to charges with respect to paragraph (4) of subdivision (d) of Section 1154.

1160.7. Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of subdivision (c) of Section 1153 or subdivision (b) of Section 1154, such charge shall be given priority over all other cases except cases of like character in the office where it is filed or to which it is referred and cases given priority under Section 1160.6.

1160.8. Any person aggrieved by the final order of the board granting or denying in whole or in part the relief sought may obtain a review of such order in the court of appeals having jurisdiction over the county wherein the unfair labor practice in question was alleged to have been engaged in, or wherein such person resides or transacts business, by filing in such court a written petition requesting that the order of the board be modified or set aside. Such petition shall be filed with the court within 30 days from the date of the issuance of the board's order. Upon the filing of such petition, the court shall cause notice to be served upon the board and thereupon shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board within 10 days after the clerk's notice unless such time is extended by the court for good cause shown. The court shall have jurisdiction to grant to the board such temporary relief or restraining order it deems just and proper and in like manner to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the order of the board.

The findings of the board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

An order directing an election shall not be stayed pending review, but such order may be reviewed as provided in Section 1158.

If the time for review of the board order has lapsed, and the person has not voluntarily complied with the board's order, the board may apply to the superior court in any county in which the unfair labor practice occurred or wherein such person resides or transacts business for enforcement of its order. If after hearing, the court determines that the order was issued pursuant to procedures established by the board and that the person refuses to comply with the order, the court shall enforce such order by writ of injunction or other proper process. The court shall not review the merits of the order.

1160.9. The procedures set forth in this chapter shall be the exclusive method of redressing unfair labor practices.

CHAPTER 7. SUITS INVOLVING EMPLOYERS AND LABOR ORGANIZATIONS

1165. (a) Suits for violation of contracts between an agricultural employer and an agricultural labor organization representing agricultural employees, as defined in this part, or between any such labor organizations, may be brought in any superior court having jurisdiction of the parties, without respect to the amount in controversy.

(b) Any agricultural labor organization which represents agricultural employees and any agricultural employer shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of this state. Any money judgment against a labor organization in a superior court shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual

member or his assets.

1165.2. For the purpose of this part, the superior court shall have jurisdiction over a labor organization in this state if such organization maintains its principal office in this state, or if its duly authorized officers or agents are engaged in representing or acting for employee members.

1165.3. The service of summons, subpoena, or other legal process of any superior court upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

1165.4. For the purpose of this part, in determining whether any person is acting as an agent of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

CHAPTER 8. LIMITATIONS

1166. Nothing in this part, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on such right.

1166.2. Nothing in this part shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this part shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

1166.3. (a) If any provision of this part, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(b) If any other act of the Legislature shall conflict with the provisions of this part, this part shall prevail.

SEC. 3. No appropriation is made by this act, nor is any obligation created thereby under Section 2231 of the Revenue and Taxation Code, for the reimbursement of any local agency for any costs that may be incurred by it in carrying on any program or performing any service required to be carried on or performed by it by this act.

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Service of the within and receipt of a copy thereof is hereby admitted this ..... day of November, A.D. 1978.